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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,428	05/10/2001	George Brainard	BRA01-NP002	6772

7590

10/24/2003

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EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 10/24/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/853,428

Applicant(s)

BRAINARD, GEORGE

Examiner

Roy D. Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 3-4 and 15-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the method of treating a light responsive disorder can be claimed both as an the exposure of the light and independently as a blocking of the same light. The specification teaches a sequence of both.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Waldman (5,447,527). Waldman discloses a method of treating a light responsive disorder (SAD) comprising:

administering a therapeutically effective amount of light to the patient, the light being generated by a light system (lamp # 4 with filter # 7) the filter transmitting in the range 490-520 nm, which overlaps the range of 425-505 nm (col. 1, lines 11-22, col. 1,

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line 64-col. 2, line 19, col. 3, lines 1-23 and col. 4, line 33-41). Note that the filter could be transparent or translucent depending upon the thickness of the coating material(s).

Claims 6, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujishima et al. (5,855,595) who disclose a tumor treatment apparatus with a light source and a filter which blocks the wavelength range of 400-700 nm (Figures 1 and 4 and col. 1, lines 21-46).

Claims 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Girerd (5,083,858). Girerd discloses a transparent or translucent composition (depending upon the thickness of the layers) comprising at least one filtering component which transmits a balance of wavelengths having a peak transmittance ranging from 425-505 nm (peak @ 493 nm and col. 10, lines 31-65, col. 11, line 36-col. 12, line 34 or col. 12, line 55-col. 13, line 33).

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Hegyi (5,235,178). Hegyi discloses a light sensor with diffuser whereby the electrical output signal is representative of a response characteristic applied to the input light which corresponds to that of a human eye or is equivalent to a light meter system comprising a light metering device configured to match wavelength sensitivity of the human eye (col. 4, line 1-col. 5, line 20).

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A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Goldman (5,923,398). Goldman discloses a method of treating a light responsive disorder (circadian disruption) comprising:

administering a therapeutically effective amount of light to the patient, the light being generated by a light system (LEDs emitting in the range of 500-560 nm, which overlaps the range of 425-505 nm) to stimulate a circadian system (col. 1, lines 20-45, col. 1, line 65-col. 2, lines 9, and col. 5, lines 18-30).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dial (5,824,024) discloses an illumination device for treating light deficiency and mood disorders that reads on claims 1 and 2; Cole (4,858,6090 discloses a bright light mask that reads on claims 1 and 2; Czeisler et al. (5,545,192) disclose use of light to modify the circadian phase; Lopez-Claros (5,562,719) discloses a

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light therapy method and apparatus for treating SAD; and Gerdt (6,235,046) discloses a passive photonic eye delivers system for chronotherapy.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 703-308-3520. The examiner can normally be reached on M-F, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 703-308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

orig. date
May 31, 2002

Oct. 22, 2003


Roy Gibson
Primary Examiner
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